

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 97

[EPA-HQ-OAR-2003-0053; FRL]

RIN 2060-A054

**Clean Air Interstate Rule (CAIR) and CAIR Federal
Implementation Plans; Corrections**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendments.

SUMMARY: In this rule, EPA is making a minor correction to the Clean Air Interstate Rule (CAIR) to restore a phrase of regulatory text related to State annual emissions reporting requirements that was inadvertently deleted when the rule was amended in 2006. This rule also corrects typographical errors in the spellings of three States in the CAIR regulatory text and corrects a typographical error in a section citation in the CAIR Federal Implementation Plans (FIPs) regulatory text.

EFFECTIVE DATE: These correcting amendments are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0053. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index,

some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742. This action and other rulemaking actions related to the CAIR and CAIR FIPs are also available at EPA's CAIR website at www.epa.gov/cair.

FOR FURTHER INFORMATION CONTACT: Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-04, Research Triangle Park, NC 27711; telephone number (919) 541-3347, e-mail address: oldham.carla@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 12, 2005, EPA published the CAIR in a final rule entitled, "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_x SIP Call" (70 FR 25162). The CAIR requires affected States to reduce emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂) that contribute significantly to nonattainment and maintenance problems in downwind States with respect to the national ambient air quality standards (NAAQS) for fine particulate matter (PM_{2.5}) and 8-hour ozone. Among other things, the rule establishes emissions reporting requirements for the affected States. On April 28, 2006, EPA amended the CAIR to include two additional States in CAIR with respect to the PM_{2.5} NAAQS (71 FR 25288). On April 28, 2006, EPA published FIPs for the CAIR as part of a final rule entitled, "Rulemaking on Section 126 Petition From North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program" (71 FR 25328).

For a detailed description of the CAIR and the CAIR FIPs, please see the rulemaking actions which are available on EPA's website at www.epa.gov/cair and in the Federal

Register at 70 FR 25162 (May 12, 2005), 71 FR 25328 (April 28, 2006), 71 FR 74792 (December 13, 2006), and 71 FR 25328 (April 28, 2006).

II. Why are the Corrections Needed?

40 CFR section 51.125 sets forth SO₂ and NO_x emission reporting requirements that must be included in State SIP revisions to meet the requirements of CAIR. Section 51.125(a)(1) as promulgated in the original CAIR read as follows: "Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin and the District of Columbia, must report annual (12 months) emissions of SO₂ and NO_x." (See 70 FR at 25333; May 12, 2005.) When EPA revised the CAIR in 2006 to add two additional States (Delaware and New Jersey) to the CAIR region for the PM_{2.5} NAAQS, EPA revised § 51.125 to add the two States to the list of those required to report annual NO_x and SO₂ emissions. However, in revising the regulatory text, EPA inadvertently deleted the phrase "must report annual (12 months) emissions of SO₂ and NO_x" (71 FR at 25302; April 28, 2006). Therefore, EPA is correcting the error and restoring the phrase as originally promulgated in CAIR. The EPA is also taking this

opportunity to correct the typographical errors in the spelling of three States in the list of States in § 51.125(a)(2) of CAIR.

EPA is also correcting a typographical error in a section reference in Appendix A to subpart EEEE of part 97 in the CAIR NO_x Ozone Season FIP.

III. What is the Rulemaking Procedure?

The EPA is issuing this final rule without prior proposal or the opportunity for public comment because EPA finds that it is unnecessary and not in the public interest to provide such notice and opportunity for comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest, the Agency may issue a rule without providing notice and an opportunity to comment. Section 307(d)(1) of the Clean Air Act (CAA), among other things, further provides that CAA subsection 307(d) does not apply when EPA has made a good cause finding pursuant to subparagraph (B) of APA subsection 553(b). (See 42 U.S.C. 7607(d)(1).) In this rule, EPA finds that it is unnecessary and would serve no useful purpose for EPA to provide an opportunity for public comment because the changes to the CAIR and CAIR FIPs

merely correct minor, inadvertent, and nonsubstantive errors. As explained above, the correction to 40 CFR section 51.125(a)(1) corrects a minor error that was inadvertently introduced in 2006 and restores the original language properly promulgated with significant public input in 2005. The additional spelling and citation corrections are minor, nonsubstantive corrections to eliminate errors in the regulatory text. Further, EPA provided notice, public hearings, and an opportunity to comment when promulgating the CAIR and CAIR FIPs. For these reasons, EPA finds pursuant to APA section 553 that good cause exists to promulgate this final rule without publishing notice of a proposed rule or providing an opportunity for public comment.

Section 553(d)(3) also allows an agency, upon a finding of good cause, to make a rule effective immediately. Because this action corrects inadvertent errors and helps to clarify requirements in the underlying rules, EPA finds good cause exists to make these corrections effective immediately.

IV. Statutory and Executive Order Reviews

This action only corrects minor, inadvertent and nonsubstantive errors in the CAIR and the CAIR FIPs promulgated in 2005 and 2006 respectively. For that

reason, this rule: is not subject to review by the Office of Management and Budget under Executive Order 12866 Regulatory Planning and Review (58 FR 51735, October 4, 1993); is not a "major rule" as defined by 5 U.S.C. 804(2); and does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Because EPA found that for this action it is unnecessary to issue a proposed rule and invite public comment, this action is also not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104B4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

The corrections do not have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, Federalism (64 FR 43255; August 10, 1999).

This action also does not significantly or uniquely affect the communities of Tribal governments, as specified

in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The corrections also are not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

The corrections are not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

The corrections do not involve changes to technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule

may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United State. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of this action in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The EPA's compliance with the above statutes and Executive Orders for the underlying rules is discussed in Section X of the CAIR at 70 FR 25305 and in Section IX of the CAIR FIPs at 71 FR 25365.

List of Subjects

40 CFR Part 51

Environmental protection.
Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Environmental protection.

Administrative practice and procedure, Air pollution
control, Electric utilities, Intergovernmental relations,
Nitrogen oxides, Reporting and recordkeeping requirements,
Sulfur dioxide.

Dated:

Stephen L. Johnson,
Administrator.

For the reasons set forth in the preamble, parts 51 and 97 of title 40, chapter I of the Code of Federal Regulations are corrected as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401-7671q.

§ 51.125 [Amended]

2. Section 51.125 is amended to read as follows:

a. In paragraph (a)(1), by removing the word "Columbia" and adding in its place the words "Columbia must report annual (12 months) emissions of SO₂ and NO_x".

b. In paragraph (a)(2), by removing the word "Deleware" and adding in its place the word "Delaware", by removing the word "Indinia" and adding in its place "Indiana", and by removing the word "Lousianna" and adding in its place "Louisiana".

PART 97—[AMENDED]

3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, et seq.

Appendix A to Subpart EEEE of Part 97 [AMENDED]

4. Appendix A to Subpart EEEE is amended by revising the citation "97.344(a)" to read "97.343(a)".